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February 4, 2002
OFFICE OF THE
EXECUTIVE SECRETARY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
360 James Robertson Parkway
Nashville, TN 37201

Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance
(InterLATA) Service in Tennessee Pursuant to Section 271 of the
Telecommunications Act of 1996*
Docket No. 97-00309

Dear David:

Please find enclosed the original and thirteen copies of the Response of the Southeastern Competitive Carriers Association, AT&T of the South Central States, and TCG MidSouth, Inc. to BellSouth Telecommunications Petition to Establish Procedural Schedule in the above-captioned proceeding.

Copies have been forwarded to parties.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walker
Henry Walker *HW*

HW/nl
Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)
BellSouth Telecommunications, Inc.'s)
Entry into Long Distance (InterLATA))
Service in Tennessee Pursuant to)
Section 271 of the Telecommunications)
Act of 1996)

Docket No.: 97-00309

**RESPONSE TO BELL SOUTH'S PETITION
TO ESTABLISH PROCEDURAL SCHEDULE**

Intervenors¹ in this docket hereby submit their Response to BellSouth's Petition to Establish Procedural Schedule ("Petition"). In its Petition, BellSouth requests that the Authority: (1) consolidate Phase I and Phase II of this proceeding; (2) permit BellSouth to file certain additional evidence; and (3) set hearing dates for the week of April 15, 2002. We address each issue below.

I. THE INTERVENORS DEFER TO THE JUDGMENT OF THE HEARING OFFICER REGARDING THE CONSOLIDATION OF PHASES I AND II.

In the *Initial Order of Hearing Officer on July 12, 2001, Status Conference* dated August 10, 2001 (the "August 10th Order"), the Hearing Officer decided to divide this docket into two phases "[a]fter careful consideration, and in the interest of judicial economy and efficiency."

¹ AT&T Communications of the South Central States, L.L.C. and TCG MidSouth, Inc. (collectively "AT&T"), and the Southeastern Competitive Carriers Association ("SECCA"), whose members are: Access Integrated Networks, Inc., Association of Communications Enterprises (ASCENT), AT&T, Birch Telecom Inc., Business Telecom, Inc., Cinergy Communications, Competitive Telecommunications Association, e.spire Communications, KMC Telecom, ICG Communications, ITC^DeltaCom, Inc., Network Telephone, NewSouth Communications, Nuvox Communications, Talk America, Time Warner Telecom, US LEC Corp., WorldCom, XO Communications, and Xspedius Corporation.

August 10th Order, at 13. The Hearing Officer's decision was based, at least in part, on the statement by counsel for BellSouth that its 271 case is twofold. *August 10th Order, at 13.*

The Intervenors have no preference whether the Authority conducts this docket in one or two phases. We note, however, that BellSouth has not provided any new facts or law that the Hearing Officer would not have considered in making his initial decision. In any event, the Intervenors defer to the judgment of the Hearing Officer as to how judicial economy and efficiency are best served in this docket.

II. THE AUTHORITY SHOULD REQUIRE BELL SOUTH TO REFILE ANEW ITS ADVANCE NOTICE AND A COMPLETE, COMPLIANT SECTION 271 FILING AT THE APPROPRIATE TIME.

The Authority has previously stated its expectation "that BellSouth fully appreciates the timing implications of its filing." *August 10th Order, at 6.* Specifically, the Authority stated that it would hold BellSouth to its representation that the 271 filing it submitted simultaneously with its advance notice, would constitute the 271 application that BellSouth would file before the FCC, and that it would be compliant in all respects when filed in Tennessee. *August 10th Order, at 5.*

BellSouth submitted its joint Georgia and Louisiana Section 271 application to the FCC on October 2, 2001 -- approximately two months after BellSouth submitted its advance notice and 271 filing in Tennessee. On December 20, 2001, BellSouth withdrew its joint Section 271

application in lieu of having the FCC reject that application.² Given these recent events, BellSouth can no longer represent to the Authority in good faith that its current 271 filing in Tennessee is materially the same as any future 271 application it may file before the FCC, or that its current filing is compliant and complete in all respects.

The Authority should strike BellSouth's July 30th 271 filing because that filing was not compliant and complete in all respects with Section 271 of the Act as contemplated by the procedural standards set forth in the Authority's August 10th Order. When BellSouth chooses to refile its advance notice and its associated 271 filing with the Authority, the Authority should continue to hold BellSouth to those same procedural standards. In particular, BellSouth should submit anew a complete 271 filing that it believes in good faith to be compliant.

BellSouth's Petition suggests that BellSouth may refile its advance notice and new 271 filing with the Authority almost immediately. As the Authority has previously held, the Act leaves to the RBOCs the decision of when to proceed with a Section 271 Application. *August 10th Order, at 11*. The Authority, however, should remind BellSouth of the timing implications of refiling its advance notice, particularly given the ongoing Performance Measurements Docket and OSS docket. The Authority has previously concluded "that both of the aforementioned dockets contain subject matter that BellSouth must rely upon in support of its Tennessee 271

² In his statement dated December 20, 2001 regarding BellSouth's withdrawal of its Section 271 application, FCC Chairman Michael Powell expressed broad concerns about BellSouth compliance with Section 271 requirements:

[Q]uestions remain regarding whether BellSouth has satisfied the rigorous requirements of the statute and [FCC] precedents, including the adequacy of [BellSouth's] operational support systems, the integrity of its performance data and its change management process, and related issues.

application." *August 10th Order at 9.* If BellSouth decides to refile before the completion of those dockets, BellSouth assumes the risk that its 271 filing may be inconsistent or not in compliance with the ultimate holdings in those dockets, which would necessitate yet another refiling of its advance notice and 271 filing.

Simply put, it makes little sense for the Authority to establish a complete procedural schedule now as BellSouth requests. Once again, BellSouth seeks to have the Authority rush forward without regard to the important work going on in the Performance Measurements and OSS dockets. The Authority has prudently decided to conduct a rigorous investigation of BellSouth's compliance with state and federal law through several coordinated dockets. Rushing forward with this docket in a "fire, ready, aim" fashion will not promote the goals of this Authority or the interests of Tennessee consumers.

III. THE AUTHORITY SHOULD SYNCHRONIZE THE PROCEDURAL SCHEDULES IN THE 271 DOCKET AND THE OSS DOCKET.

The Authority, BellSouth, and the Intervenors have always expected that the 271 docket, the Performance Measurements docket, and the OSS docket would be kept in sync. *August 10th Order, at 11-12.* BellSouth and the intervenors, however, disagree about how to accomplish the synchronization. BellSouth has argued that the dockets should be run in parallel, whereas the Intervenors have asserted that the dockets should be run in serial.

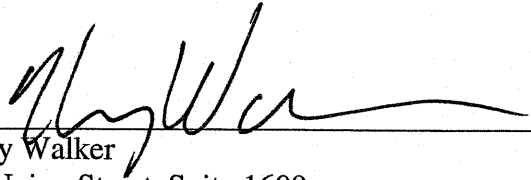
Performance measurements and OSS are critical to evaluating compliance with many checklist items. Thus, attempting to proceed with a 271 hearing before the Performance Measurements docket and OSS docket are substantially complete is like trying to put the roof on a house without first completing the foundation and the walls. Indeed, the Authority cannot reasonably recommend approval of BellSouth's 271 application until it has satisfied itself that BellSouth complies with the Authority's performance standards, and BellSouth provides non-

discriminatory access to its OSS. It is hard to see how the Authority would benefit in any way by moving forward with the 271 docket before assessing the impact of the imminent Performance Measurements order, or moving forward more quickly than the OSS docket. To the contrary, judicial economy and efficiency dictate that the Authority should conduct the 271 docket based on the outcomes of the Performance Measurements and OSS dockets.

We recommend that the Authority abstain from setting any procedural schedule until after: (a) BellSouth has refiled its advance notice and 271 filing (which could generate the need for additional discovery); (b) the Authority issues its order in the Performance Measurements docket (which very well could affect the evidence that BellSouth would have to submit as part of a compliant applications); and (c) the Authority issues a procedural schedule for the OSS docket (which is currently under consideration). Until the Authority and the parties have that information, it is impossible to set a reasonable and efficient procedural schedule for the 271 docket.

Respectfully submitted,

By: _____


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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2002, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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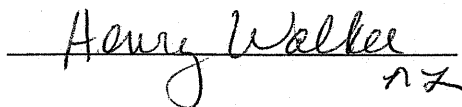
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